

SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA

2009 JAN -8 PM 4: 42

JEANNE HICKS, CLERK

Beth Blanton

BY: \_\_\_\_\_

1 Larry A. Hammond, 004049  
2 Anne M. Chapman, 025965  
3 OSBORN MALEDON, P.A.  
4 2929 N. Central Avenue, 21st Floor  
5 Phoenix, Arizona 85012-2793  
6 (602) 640-9000  
7 E-mail: lhammond@omlaw.com  
8 E-mail: achapman@omlaw.com

9 John M. Sears  
10 107 North Cortez Street  
11 Suite 104  
12 Prescott, Arizona 86301  
13 (928) 778-5208  
14 E-mail: John.Sears@azbar.org

15 Attorneys for Defendant

16 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

17 IN AND FOR THE COUNTY OF YAVAPAI

18 STATE OF ARIZONA

19 Plaintiff,

20 vs.

21 STEVEN CARROLL DEMOCKER,

22 Defendant.

23 No. CR 2008-1339

24 DEFENDANT'S REPLY TO  
25 STATE'S RESPONSE TO MOTION  
26 FOR A NEW DETERMINATION  
27 OF PROBABLE CAUSE

28 (Oral Argument Requested)

29 Defendant Steven DeMocker, by and through counsel, hereby replies to the  
30 State's Response to his Motion for a New Determination of Probable Cause.

### 31 ARGUMENT

32 The State's Response to Mr. DeMocker's Motion is simply a continuation of its  
33 pattern in this case of creating theories based on wild speculation, ignoring the absence  
34 of actual evidence against Mr. DeMocker and attempting to mischaracterize the existing  
35

1 evidence. In the Response and during Mr. DeMocker's *Simpson* hearing, the State  
2 conceded that its presentation to the grand jury contained numerous inconsistencies,  
3 misstatements and falsehoods. While this acknowledgement was necessary, it was  
4 insufficient and it does nothing to address either the State's violation of Mr.  
5 DeMocker's substantive procedural rights by failing to present evidence to the grand  
6 jury in a fair and impartial manner nor that fact that the State obtained the indictment  
7 with the use of false, misleading, irrelevant and prejudicial testimony in violation of  
8 Rule 12.9. The State's assertion that these multiple errors are "harmless, and do not  
9 merit remand" ignores precedent and attempts to carelessly and unlawfully undermine  
10 Mr. DeMocker's rights.

11 Mr. DeMocker has a right under Ariz. Rule Crim. P. 12.9 to a grand jury  
12 proceeding that respects his "substantial procedural right[s]." Ariz. R. Crim. P. 12.9.  
13 Substantive due process in grand jury proceedings "requires the use of an unbiased  
14 grand jury and a fair and impartial presentation of the evidence." *See Crimmins v.*  
15 *Super. Ct.*, 137 Ariz. 39, 41, 668 P.2d 882, 884 (1983) (en banc), *see also Maretick v.*  
16 *Jarrett*, 204 Ariz. 194, 197, 62 P.3d 120, 123 (2003) (To "do its job effectively, the  
17 grand jury must receive a fair and impartial presentation of evidence.") A prosecutor's  
18 failure to correct false testimony or where a witness provides misleading testimony  
19 necessarily results in a denial of substantial due process and requires a remand for a new  
20 determination of probable cause. *Nelson v. Royston*, 137 Ariz. 272, 277, 669 P.2d  
21 1349, 1354 (Ct. App. 1983). The obligation to correct false or misleading testimony  
22 exists even where the State has not solicited such testimony. *See Napue v. Illinois*, 360  
23 U.S. 264, 269 (1959).

24 Mr. DeMocker's rights were violated by the State in its presentation to the grand  
25 jury and this Court should therefore remand this case for a new determination of  
26 probable cause.

1           **1. False and Misleading Testimony Regarding Forensic Evidence and**  
2           **Failure to Disclose Exculpatory Laboratory Reports Requires Remand.**

3           The State does not deny that it provided misleading and incomplete testimony to  
4           the grand jury about the forensic evidence. Instead, the State argues that it is only  
5           required to present “clearly exculpatory” evidence. It did not do that, either.

6           **A. Unknown Male DNA Under Victim’s Fingernails & Detective McDormett’s**  
7           **False Testimony About This Evidence Requires Remand.**

8           There is a complete DNA profile of an unknown male underneath Ms.  
9           Kennedy’s fingernails. The most obvious inference is that she resisted an attack by a  
10          male, whose identity is so far unknown. The State, however, prefers to ignore the  
11          obvious and, instead, without any evidence to support it, speculate that the DNA was  
12          the result of contaminated fingernail clippers used by the medical examiner’s office.

13          Detective McDormett admitted that he provided false testimony to the grand jury  
14          that the nail clippers used during the autopsy of Ms. Kennedy were not sterilized.  
15          (Reporter’s Partial Transcript of Proceedings, Evidentiary Hearing, December 23 and  
16          24, 2008, at page 7:6-17 (hereinafter referred to as Ex. A.)) While he claims he did not  
17          know his testimony was false until after he so testified, police reports indicate that  
18          Karen Gere with the Medical Examiner’s Office notified detectives over two months  
19          before the testimony, that although the clippers were not single use, “they would usually  
20          clean them after being used.” (Bates No. 001941).

21          Detective McDormett’s false testimony in this regard was a violation of the  
22          State’s duty to present grand jury and a fair and impartial presentation of the evidence,  
23          *Crimmins*, 137 Ariz. at 41, 668 P.2d at 884, as well a violation of the prosecutor’s duty  
24          to correct false testimony. *Nelson*, 137 Ariz. at 277, 669 P.2d at 1354

25          The State concedes correctly that it is required to present clearly exculpatory  
26          evidence to the grand jury. (Response at 12, (citing *Trebus v. Davis*, 189 Ariz. 621,  
27          625, 944 P.2d 1235, 1239 (1997)). Clearly exculpatory evidence need only be “of such  
28          a weight that it *might* deter the grand jury from finding the existence of probable cause.”

1 *Trebus*, 189 Ariz. at 625, 944 P.2d at 1239 (emphasis added). The unequivocal  
2 evidence of unknown male DNA underneath the victim's fingernails, without the false  
3 testimony that the fingernail clippers used to obtain the clippings were not clean, clearly  
4 *might* have deterred the grand jury from finding the existence of probable cause and  
5 therefore the State was and is required to present that evidence to the grand jury. *Id.* A  
6 complete DNA profile of an unknown male underneath the victim's fingernails is  
7 substantial and clearly exculpatory evidence that is obviously relevant to a  
8 determination of probable cause and must be shared with a grand jury.

9  
10 B. Misleading Testimony Regarding DNA Evidence on the Phone Requires  
11 Remand.

12 The State failed to make a "fair and impartial presentation of the evidence" with  
13 respect to the DNA evidence on the phone by again providing only partial, misleading  
14 results.<sup>1</sup> Thus, even assuming, as the State argues in its Response, that it was not  
15 required to present the phone DNA evidence because it was not "clearly exculpatory,"  
16 the State nonetheless violated Mr. DeMocker's rights under Rule 12.9 with respect to  
17 this evidence.

18 Detective Brown testified that with respect to the DNA on the phone, "the minor  
19 is inconclusive" and that James Knapp (who lived in a guest house on the property  
20 where the body was discovered) had been excluded. (GJ63:11-15). The State did not  
21 tell the grand jury that DNA from an unknown male was found on this item of evidence.  
22 (Bates No. 000332). This evidence is significant given that unknown male DNA was  
23 identified in four key areas at the scene. The DNA evidence on the phone is particularly  
24 important because the victim was allegedly talking on this phone when the attack  
25 occurred. The State's incomplete presentation of evidence about the DNA on the phone

26  
27 <sup>1</sup> There are evidently ten separate reports regarding forensic testing of the phone next to the victim, some  
28 apparently contradicting others. Defense counsel notes that although we are aware of the existence of these tests  
based on a four page summary of forensic testing of four items, counsel has still not received the underlying  
testing or results for much of this testing, despite the State's continuing obligation to make timely disclosure.

1 was therefore misleading and was not a fair and impartial presentation of the evidence.  
2 *See Crimmins*, 137 Ariz. at 41, 668 P.2d at 884. Additionally, this evidence is  
3 additional and substantial evidence of an unidentified male presence at the crime scene  
4 that *might* have deterred the grand jury from finding the existence of probable cause,  
5 and therefore the State was and is required to present it to the grand jury. *Trebus*, 189  
6 Ariz. at 625, 944 P.2d at 1239.

7 C. Misleading Testimony Regarding Light Bulb Evidence Requires Remand.

8 The State also provided false and misleading testimony to the grand jury about  
9 forensic results from the laundry room light bulbs. Detective Brown testified that the  
10 DNA results on the light bulb evidence was “inconclusive as to anyone suppose [sic] to  
11 be at the house.” (GJ63:7-10). Detective McDormett told the grand jury “[w]e believe  
12 Mr. DeMocker was in the laundry room and had gotten into the house while Carol was  
13 out for her run,” (GJ54:21-24).

14 The State did not tell the grand jury that an unknown male’s DNA was on the  
15 unscrewed light bulbs in that same room. The State also did not tell the grand jury that  
16 fingerprint evidence had been developed on one of the light bulbs that was not identified  
17 with Mr. DeMocker, again strongly suggesting the presence of an unknown person at  
18 the scene. Presentation of only part of this evidence while omitting the evidence of  
19 unknown male DNA on the evidence was misleading and violated Mr. DeMocker’s  
20 right to a fair and impartial presentation of the evidence. *See Crimmins*, 137 Ariz. at 41,  
21 668 P.2d at 884. This evidence of an unknown male presence at the scene also *might*  
22 have deterred the grand jury from finding the existence of probable cause and therefore  
23 should have been presented to the grand jury. *Trebus*, 189 Ariz. at 625, 944 P.2d at  
24 1239.

25 D. Misleading Testimony Regarding Door Evidence Requires Remand.

26 The State made further omissions to the grand jury regarding unknown male  
27 DNA found in blood on a door handle at the scene. Although Detective McDormett  
28

1 testified before the grand jury that blood evidence was collected from a door handle at  
2 the crime scene, (GJ19:25-20:1), and Detective Brown testified that Mr. DeMocker was  
3 excluded as a source of this blood, (GJ64:1-5), neither witnesses disclosed to the grand  
4 jury that there was unknown male DNA found in the blood on this door handle. (Bates  
5 No. 000332). This information was provided to detectives over a month and a half  
6 before the grand jury presentation. It is still further support that an unidentified male  
7 was at the crime scene. Here again, the State provided only part of the evidence to the  
8 grand jury. Failing to provide the evidence that unknown male DNA was found on this  
9 door handle resulted in misleading the grand jury in violation of Mr. DeMocker's rights  
10 to a fair and impartial presentation of the evidence. *See Crimmins*, 137 Ariz. at 41, 668  
11 P.2d at 884. Obviously, even more information suggesting the presence of an unknown  
12 male at the scene *might* have deterred the grand jury from finding the existence of  
13 probable cause. *Trebus*, 189 Ariz. at 625, 944 P.2d at 1239.

14 E. Omission of Clearly Exculpatory Evidence Requires Remand.

15 As we have noted, clearly exculpatory evidence need only be "of such a weight  
16 that it *might* deter the grand jury from finding the existence of probable cause." *Trebus*,  
17 189 Ariz. at 625, 944 P.2d at 1239. The Court in *Trebus* held that the State's interest is  
18 not just in getting an indictment but in serving the interests of justice, and stated that  
19 "[w]e therefore see nothing odd in requiring the prosecutor to tell the grand jury about  
20 possible exculpatory evidence." *Id.* The State cannot simply decide that forensic test  
21 results that don't fit its theory are irrelevant or inconsequential.

22 In addition to searching Mr. DeMockers' home twice, deputies also searched his  
23 car, his offices in Prescott and in Phoenix, several storage units, a rental car, a rental  
24 apartment he and his daughter used in Phoenix, his wet laundry, his clothes, his  
25 briefcase, his washing machine, the drain from his washing machine, bathroom sink  
26 drains, the tub, lint from his dryer, his bike, bike pump, and every shoe he owned. No  
27 incriminating DNA, blood or fingerprint evidence of any kind was found as a result of  
28



1 just become due, when, in fact, the divorce settlement was financially beneficial to Mr.  
2 DeMocker.

3       The State's Response not only fails to address the entirely speculative and  
4 seriously prejudicial information about Mr. DeMocker's alleged financial fraud  
5 presented to the grand jury, it actually persists in perpetuating the false allegations. (See  
6 Response at 5, "It is believed that Defendant gave false information on prior income tax  
7 forms and on the financial affidavit provided to the court during divorce proceedings"  
8 and referring to "perjury before the court.") While continuing with their rampant and  
9 prejudicial speculation, the State also seems to acknowledge that it still does not have  
10 evidence to back up its dangerous conjecture, explaining that these issues "*if proven*  
11 *true*" would have an impact on Mr. DeMocker's professional standing. *Id.*

12       These omissions and the provision of this misleading and false information about  
13 Mr. DeMocker's financial obligations to the victim violated the State's "duty of good  
14 faith on the part of the prosecutor with respect to the court, the grand jury and the  
15 defendant." *Nelson*, 137 Ariz. at 276, 669 P.2d at 1353. A remand for a new  
16 determination of probable cause is therefore required. *Nelson*, 137 Ariz. at 277, 669  
17 P.2d at 1354; *see also Maretick*, 204 Ariz. at 195, 62 P.3d at 121.

18       **6. False Testimony Regarding Mr. DeMocker's Statements Regarding His**  
19       **Bike Ride Require Remand.**

20       The State's Response fails to address its repeated false testimony about Mr.  
21 DeMocker's statements regarding his bike ride. Detective McDormett testified falsely  
22 to the grand jury on four separate occasions that Mr. DeMocker told detectives that he  
23 was riding his bike "across the street" from the victim's neighborhood. (GJ22:12-14).  
24 Mr. DeMocker in fact told investigators that he was riding his bike on a trail near  
25 Granite Mountain which is at its closest 1.5 miles and, during part of the ride, over 10  
26 miles away from the victim's home. It is certainly not "across the street" and Mr.  
27 DeMocker did not ever say he was riding his bike across the street from the victim's  
28

1 home. In addition to these falsehoods about the location of the ride, there is no offshoot  
2 trail point leading towards Glenshandra from the trail Defendant told the police he was  
3 using, as alleged by Detective McDormett. This testimony falsely put Mr. DeMocker in  
4 the immediate area of the crime and also falsely represented that he "admitted" he was  
5 near the scene of the crime. McDormett also testified that Mr. DeMocker "gave  
6 differing times" for the end of his bike ride. (GJ22:6-8). This is also not true and was  
7 an improper attempt to call into doubt Mr. DeMocker's consistent statements to police  
8 about where he was at the time of the murder.

9 The State violated its duty to present the evidence in a fair and impartial manner  
10 and its duty to correct false testimony. *See Napue*, 360 U.S. at 269. Remand for a new  
11 determination of probable cause is therefore required. *Nelson*, 137 Ariz. at 277, 669  
12 P.2d at 1354; *see also Maretick*, 204 Ariz. at 195, 62 P.3d at 121.

13 **7. Misleading Information About Mr. DeMocker's Statements On Learning**  
14 **of the Victim's Death Require Remand.**

15 The State's Response fails to address that it provided false and misleading  
16 information to the grand jury about Mr. DeMocker's statements upon learning of Ms.  
17 Kennedy's death – even though Detective McDormett has already admitted that part of  
18 his testimony about this was false. Detective McDormett acknowledged at the *Simpson*  
19 hearing that he provided false testimony to the grand jury testimony that Mr. DeMocker,  
20 upon learning of Ms. Kennedy's death "asked if the interview could be quick because  
21 he had to go to work in the morning." (Ex. A 4:9-22.) Detective McDormett repeated  
22 this falsehood to the grand jury on two occasions. (GJ21:12-16 and GJ52:22-25). This  
23 was particularly prejudicial because Detective McDormett also told the grand jury that  
24 when Mr. DeMocker said this he had "just learned within about an hour of this  
25 interview that the mother of his children were [sic] dead" (GJ21:12-16). Because this  
26 testimony was false and prejudicial, it violated Mr. DeMocker's rights under Rule 12.9.

1 Mr. DeMocker's actual statements to police about the timing of the interview,  
2 which Detective McDormett continues to falsely characterize as "comments to that  
3 effect," (Ex. A 4:9-22), were simply that he was covering his office alone the next day  
4 and asking if the interview was going to be an all night interview, (Bates No. 1913), and  
5 later asking if the interview could be finished up at a later time after asking about where  
6 his daughter was and noting the recent shock to her of her losing her mother. (Bates  
7 No. 1919-1920). Detective McDormett's testimony to both the grand jury and his  
8 subsequent characterization to this Court about Mr. DeMocker's statements were  
9 grossly misrepresented and mischaracterized. Remand is therefore required. *Crimmins*,  
10 137. Ariz. at 41, 668 P.2d at 884.

11 Instead of addressing its false and misleading provision of testimony to the grand  
12 jury, the State's Response openly speculates on how a person should properly respond  
13 upon learning that a loved one's phone call ended abruptly, concluding that "[w]hen one  
14 learns that a love one might be hurt or in danger, any reasonable person would take  
15 whatever actions necessary to dispel the concerns" and concluding that Mr. DeMocker's  
16 response was "highly unusual." In support of this, the State repeats its offensive and  
17 false accusations made initially to the grand jury by Detective McDormett that Mr.  
18 DeMocker asked what kind of state the body was in and whether or not his daughter  
19 Charlotte saw the victim before he could have known the cause of death. (GJ53:5-13).  
20 At the grand jury presentation, Mr. Ainley persisted with this line of questioning;  
21 egging the witness on, stating that it "could have been heart attack. Could have been a  
22 stroke. Could have been anything, and yet he is concerned about the condition of the  
23 body." (GJ53:14-16). The State's Response repeats this outrageous inference by  
24 asserting "[w]hen Defendant learned that Carol was dead, one of the first questions he  
25 asked was regarding the condition of the body." (Exhibit A, 11:2-3). All of this fails to  
26 acknowledge that Mr. DeMocker had been told by Detectives that the victim had  
27 possibly fallen to her death, and he was naturally as a father concerned that his already  
28

1 distraught child had seen the body of her dead mother. There is nothing remotely  
2 suspicious about such a question when placed in its proper context.

3       Testimony to the contrary was false, seriously misleading and highly prejudicial.  
4 Both Mr. Ainley and Detective McDormett knew it was misleading because Mr.  
5 DeMocker had been told that the victim had died and had possibly fallen to her death.  
6 (Bates No. 001907).

7       This testimony was in violation of both the State's "duty of good faith" and its  
8 duty to correct false testimony. *See Nelson*, 137 Ariz. at 276, 669 P.2d at 1353 and  
9 *Napue*, 360 U.S. at 269 . This necessarily resulted in a denial of substantive due process  
10 and requires a remand for a new determination of probable cause. *Nelson*, 137 Ariz. at  
11 277, 669 P.2d at 1354; *see also Maretick*, 204 Ariz. at 195, 62 P.3d at 121.

12       **8. Remand is Required Because Unsupported Theories Were Presented to**  
13 **the Grand Jury as Fact.**

14       The State does not address, because it cannot deny, the multiple examples  
15 outlined in the Motion of the State's testimony before the grand jury that was full of  
16 gross speculation with no basis in fact or evidence, and often made in direct  
17 contradiction to the available evidence. This testimony includes speculation about how  
18 the victim was attacked which is inconsistent with the actual evidence; unsupported  
19 speculation about the mood of the attacker; unsupported speculation about the  
20 relationship between the attacker and the victim; unsupported speculation about the  
21 victim's response to the attacker which is inconsistent with the evidence; unsupported  
22 speculation on the ability of the purported weapon to withstand the attack; allegations  
23 about financial fraud that the State knows it is unable to presently substantiate or even  
24 explain; unsupported theories about Mr. DeMocker entering and hiding in the house as  
25 well as purposeful withholding of forensic evidence contrary to this theory; and  
26 unsupported assertions about the victim's phone habits, again contrary to the evidence.  
27  
28

1 Presentation of this evidence is a clear violation of the State's duty to present an  
2 unbiased and impartial presentation of the evidence to the grand jury. Remand is  
3 required to address these multiple violations.

4  
5 **9. Incorrect Information about Mr. DeMocker's Miranda Rights Require Remand.**

6 The State fails to respond to the fact that it provided incorrect information to the  
7 grand jury about Mr. DeMocker being given his Miranda rights. The information that  
8 Mr. DeMocker had been read his Miranda rights when in fact he had not been read his  
9 rights until he had given hours of statements to the police violated the duty of good faith  
10 Mr. Ainley has to correct false testimony. *See Napue*, 360 U.S. at 269. Remand is  
11 required for a new determination of probable cause to address this violation. *Nelson*,  
12 137 Ariz. at 277, 669 P.2d at 1354; *see also Maretick*, 204 Ariz. at 195, 62 P.3d at 121.

13 **10. Misleading Information About Victim's Associates Requires Remand.**

14 The State does not deny that it provided false and misleading testimony to the  
15 grand jury about the victim's associates. When asked by a grand juror if the victim had  
16 any other relationships, (GJ65:19-20), Detective Brown indicated she had one boyfriend  
17 (GJ65:21-23). The State knew that the victim had multiple relationships and admits this  
18 in its Response but argues that Brown's response was appropriate because the victim  
19 only had one boyfriend. (Response, at 4). The grand juror in question did not ask only  
20 about the victim's boyfriends, he asked about relationships. The grand juror was asking  
21 a follow up question about a friend of Ms. Kennedy, Mr. Knapp, not a boyfriend, in the  
22 context of the forensic results. The State did not honestly respond to the grand jurors'  
23 question. This was yet another violation of the State's duty to correct inaccurate  
24 information and a further violation of Mr. DeMocker's due process rights.

25 **11. False Information About Mr. DeMocker's Date of Arrest Requires Remand.**  
26

1           The State and Detective McDormett claim that the grand jury transcript about his  
2 testimony of the month of Mr. DeMocker's arrest is incorrect. (Ex A, page 6:9-18).  
3 The grand jury transcript indicates that the witness told the grand jury that Mr.  
4 DeMocker was arrested on August 24, 2008, (GJ36:4-5), when in fact Mr. DeMocker  
5 was arrested on October 23. The Court is left to rely on the transcript which is  
6 demonstrably more reliable than the detective's memory.

7           As noted in the Motion, the incorrect August arrest date is particularly prejudicial  
8 because of other testimony regarding Mr. DeMocker ordering books related to hiding  
9 and changing his identity that were delivered to his office on August 22, 2008 (GJ34:1-  
10 21), and his daughter's diary indicating on August 18<sup>th</sup> that Mr. DeMocker was  
11 "considering running." (GJ38:12-18). Detective McDormott's testimony that Mr.  
12 DeMocker was arrested on August 24<sup>th</sup> left the grand jury with the incorrect and  
13 prejudicial impression that Mr. DeMocker was arrested two days after delivery of the  
14 books about hiding and changing identities, as opposed to being arrested almost two  
15 months later. The State, without addressing the book evidence or explaining how it is  
16 not unfairly prejudicial, simply asserts in its Response that it is not. This false  
17 testimony led to misleading inferences and therefore violated Mr. DeMocker's  
18 substantial due process rights. Remand is required for a new determination of probable  
19 cause. *Nelson*, 137 Ariz. at 277, 669 P.2d at 1354; *see also Maretick*, 204 Ariz. at 195,  
20 62 P.3d at 121.

## 21           **12. "Several Girlfriends" Evidence.**

22           The State claims the information about Mr. DeMocker's multiple girlfriends is  
23 somehow relevant to rebut his attempts to improve his relationship with Ms. Kennedy  
24 after the divorce and his statement that he loved her. The State apparently believes that  
25 evidence of multiple relationships is inconsistent with Mr. DeMocker's love for a  
26 woman he was married to for 26 years and is somehow evidence of capital murder.  
27  
28

1 This was not a fair and impartial presentation of the evidence, and remand is required as  
2 a result.

3 **13. "Escort Services" Evidence.**

4 The State admits that "[f]urther investigation has revealed" that "Great  
5 Expectations" is not an escort service as it falsely told the grand jury. (Response, at 4.)  
6 "Further investigation" was completed by defense counsel in seconds through an online  
7 Google search of the name "Great Expectations" that quickly revealed it is a dating  
8 service. The State does not even pretend to have a legitimate reason for presentation of  
9 this evidence and instead argues that even though it is not an escort service, calling it an  
10 "escort service" was not false or misleading or unduly prejudicial. (*Id.*) On the  
11 contrary, Detective McDormett provided this information in response to a grand juror  
12 question expressing discomfort with the allegations of financial fraud and the absence of  
13 an accounting. (GJ58:20-21). This information was given to the grand jury for no  
14 proper purpose, and its sole purpose was to cast aspersions on Mr. DeMocker's  
15 character, and it violated the State's duty to present evidence to the grand jury in a fair  
16 and impartial way.

17 **CONCLUSION**

18 The State is still without actual evidence linking Mr. DeMocker to the crime, it is  
19 still creating wildly speculative stories to explain why the evidence is inconsistent with  
20 its theories<sup>2</sup> and it is still ignoring the actual physical evidence in the case. While the  
21 State continues to weave theories and test evidence eight and nine times with  
22 contradictory results, Mr. DeMocker sits in jail, for two and half months now, denied  
23 his freedom and his ability to fully provide for his daughters in their greatest time of  
24 need. As Arizona courts have repeatedly stated with respect to grand juries:

25  
26  
27 <sup>2</sup> Such as speculating at the *Simpson* hearing, for the first time and without any foundation whatsoever, that the  
28 Defendant must have been wearing gloves that night as a way to account for the lack of fingerprint and DNA  
evidence connecting him to the scene.

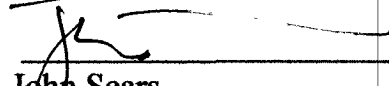
1                    "We must bear in mind the potential for abuse and the devastating  
2 personal and professional impact that a later dismissal or acquittal can  
3 never undo, when the prosecutor is allowed to exercise control over a  
4 cooperative grand jury."

5 *Herrell v. Sargeant*, 189 Ariz. 627,631, 944 P.2d 1241,1245 (1997) (*en banc*) citing  
6 *Crimmins*, 137 Ariz. at 44, 668 P.2d at 887 (internal quotations omitted). This is  
7 precisely what has already happened to Mr. DeMocker. His life and his career have  
8 been devastated by these unfounded charges improperly obtained by the State, and his  
9 reputation has been damaged, perhaps beyond real repair.

10                   For these reasons Mr. DeMocker respectfully requests that the Court remand this  
11 case to the grand jury for a new determination of probable cause, with specific  
12 instructions to the State regarding what evidence must be presented this time, and what  
13 evidence and statements may not be made in a subsequent grand jury presentation.

14  
15                   DATED this 8<sup>th</sup> day of January 2009.

16  
17                   By

  
18 John Sears  
19 107 North Cortez Street  
20 Suite 104  
21 Prescott, Arizona 86301  
22 OSBORN MALEDON, P.A.

Larry A. Hammond  
Anne M. Chapman  
2929 N. Central Avenue, Suite 2100  
Phoenix, Arizona 85012-2793  
Attorneys for Defendant

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24  
25 ORIGINAL of the foregoing filed  
26 this 8<sup>th</sup> day of January, 2009, to:

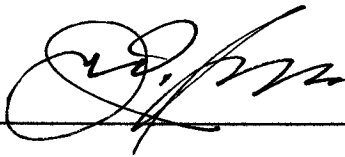
27 Jeanne Hicks,  
28 Clerk of the Court  
Yavapai County Superior Court

1 120 S. Cortez  
2 Prescott, AZ 86303

3 COPIES of the foregoing hand delivered  
4 this 21 day of January, 2009 to:

5 The Hon. Thomas B. Lindberg  
6 Judge of the Superior Court  
7 Division Six  
8 120 S. Cortez  
9 Prescott, AZ 86303

10 Mark K. Ainley, Esq.  
11 Office of the Yavapai County Attorney  
12 255 E. Gurley  
13 Prescott, AZ 86301-3868

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